



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 4, 2020** which reads as follows:*

“G.R. No. 194353 – CANIOGAN CREDIT AND DEV’T COOPERATIVE, INC. V. ERNESTO MENDOZA, FLORANTE JIMENEZ, NATIONAL LABOR RELATIONS COMMISSION, AND COURT OF APPEALS

This petition for review on *certiorari*¹ seeks to reverse the Decision dated May 27, 2010² and Resolution dated October 21, 2010³ of the Court of Appeals in CA-G.R. SP No. 110872 holding that respondents Ernesto A. Mendoza and Florante S. Jimenez were constructively dismissed and denying petitioner’s motion for reconsideration.

ANTECEDENTS

Respondents filed a complaint for constructive dismissal and monetary claims⁴ against petitioner Caniogan Credit and Development Cooperative, Inc.

Respondents are employees of Caniogan Credit.⁵ They were closely associated with Mr. Celso F. Pascual, Sr. and Mr. Serafin Terencio (petitioner’s former General Manager and Collection

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¹ *Rollo*, pp. 7-34.

² Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Rosmari D. Carandang and Manuel M. Barrios; *rollo*, pp. 40-56.

³ *Rollo*, pp. 79-80.

⁴ Illegal thirty percent (30%) deduction from their 13th month pay and forced loan deduction of one percent (1%) per month from their employee’s provident fund with prayer for reinstatement and full backwages, moral, exemplary, and actual damages, and attorney’s fees.

⁵ *Rollo*, p. 41.

Manager, respectively).⁶ They were transferred to petitioner's other branches where they reported for three (3) months but were not given any tasks.⁷ Their co-employees avoided them because they were afraid that they, too, would suffer the same fate.⁸ Respondents wrote petitioner questioning what they perceived was an act of constructive dismissal committed against them. Without addressing respondents' letter, petitioner issued notices requiring respondents to explain why they did not report for work on July 18, 2006.⁹ This was followed by a termination letter stating that respondents' services will be discontinued effective August 3, 2006.¹⁰

Petitioner, on the other hand, averred that the reorganization of all the employees was pursuant to a resolution approved by the board of directors sometime in February 2006. In the implementation thereof, Mendoza was assigned to the Credit and Investigation Management Services as Investigator, and Jimenez, to the Cash Management Services as staff. On April 28, 2006, Mendoza was ordered to report to the Calumpit Branch, and Jimenez, to the Guiguinto Branch. Barely three (3) months in their new assignments or on July 17, 2006, respondents questioned their transfer through a letter addressed to General Manager Joselito Alejo. They informed him that they were no longer reporting for work. They felt that they were moved to other assignments because they were being punished. The following day (July 18, 2006), respondents filed a complaint for constructive dismissal against petitioner. Since then, respondents no longer reported for work as they had already started employment with Malolos Credit and Development Cooperative.¹¹

On July 25, 2006, Alejo issued a memorandum requiring respondents to explain in writing why no disciplinary action should be meted on them for their continued absence without leave since July 17, 2006. They were also instructed to attend the hearing before the Hearing Panel on Discipline on July 31, 2006, 3 o'clock in the afternoon. Respondents replied through letter dated July 29, 2006 effectively reiterating the contents of their earlier letter. Meanwhile, respondents failed to attend the July 31, 2006 hearing, thus, the same was reset to August 2, 2006. But respondents again failed to appear.

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⁶ *Id.* at 44.

⁷ *Id.*

⁸ *Id.* at 422-428.

⁹ *Id.* at 44.

¹⁰ *Id.* at 116-123.

¹¹ *Id.* at 82-83.

On this later date, the hearing panel terminated¹² respondents' employment effective August 3, 2006 due to absences without official leave and insubordination.¹³ Under Resolution No. 06-08-175 dated September 2, 2006, the board of directors reversed respondents' dismissal citing as ground the urgent need for their services. Under letter dated September 2, 2006, the management informed respondents of the recall of their termination and ordered them to report back for work. Respondents, nonetheless, refused to comply, asserting that their assignment to the other branches amounted to constructive dismissal.¹⁴

The Labor Arbiter's Ruling

By Decision¹⁵ dated February 28, 2007, Labor Arbiter Leandro M. Jose declared respondents to have been constructively dismissed and ordered their reinstatement with backwages. The labor arbiter ruled that petitioner was not able to prove that respondents' transfer was a valid exercise of its management prerogative. In fact, petitioner's twin April 28, 2006

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¹² *Id.* at 134.

¹³ "A. GRAVE OFFENSES – 1ST OFFENSE DISMISSAL.

xxx xxx xxx

13. Refusal or failure to comply with an order of reassignment from one place of assignment to another by management.

19. AWOL, and abandoned job or unauthorized absence for seven (7) consecutive working days and remain unheard from.

xxx xxx xxx" (Caniogan Credit's Employee's Manual, *rollo*, p. 27.)

¹⁴ *Rollo*, pp. 82-87.

¹⁵ *Id.* at 155-165.

Memoranda¹⁶ confirmed respondents' claim that they were transferred to other branches without any specific tasks. Except for attorney's fees, the labor arbiter dismissed respondents' money claims for lack of sufficient basis.¹⁷

The National Labor Relations Commission's (NLRC) Ruling

By Decision¹⁸ dated May 30, 2008, the NLRC initially affirmed the labor arbiter's ruling.

Petitioner filed a motion for reconsideration reiterating that respondents' reassignment was only temporary in nature pursuant to the approved reorganization plan of the cooperative. The removal of Pascual and Terencio as General Manager and Collection Manager, respectively, had caused some of the employees to exhibit hostile attitude towards the new management. In fact, they even staged a

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¹⁶ MEMO

06-04-_____

TO : ERNESTO MENDOZA
FROM : OFFICER IN CHARGE
DATE : 28 APRIL 2006
SUBJECT : Work Assignment

On account of our on going re-organization you are hereby instructed to set as your temporary reporting station our Calumpit Branch starting May 2, 2006. You shall continue with your present assignments and continue to report to the undersigned for your duties and responsibilities. The re-assignment is deemed necessary to augment your knowledge on your present tasks. You shall be apprised of the modifications on your assignments from time to time. Further, you are not allowed to secure any copy of any of the documents or use for purposes other than your assignments information from the branches. **You will not be part of the manpower complement of the branch where you will be assigned. Hence, no work for the branch will be assigned to you except after prior permission from the undersigned is secured.** (*Emphasis supplied*) For your compliance.

Signed

JOSELITO S. ALEJO
AGM/Comptroller (*Rollo*, p. 128.)

MEMO

06-04-_____

TO : FLORANTE JIMENEZ
FROM : OFFICER IN CHARGE
DATE : 28 APRIL 2006
SUBJECT : Work Assignment

On account of our on going re-organization you are hereby instructed to set as your temporary reporting station our Guiguinto Branch starting May 2, 2006. You shall continue with your present assignments and continue to report to the undersigned for your duties and responsibilities. The re-assignment is deemed necessary to augment your knowledge on your present tasks. You shall be apprised of the modifications on your assignments from time to time. Further, you are not allowed to secure any copy of any of the documents or use for purposes other than your assignments information from the branches. **You will not be part of the manpower complement of the branch where you will be assigned. Hence, no work for the branch will be assigned to you except after prior permission from the undersigned is secured.** (*Emphasis supplied*) For your compliance. *Signed*

JOSELITO S. ALEJO
AGM/Comptroller (*Rollo*, p. 129)

¹⁷ *Rollo*, pp. 155-165.

¹⁸ *Id.* at 182-192.

protest in front of the cooperative's office and circulated a petition entitled "*Kapahayagan ng mga Miyembro ng Caniogan Credit and Development Cooperative*," copy of which petitioner submitted for the first time on appeal. Too, there could be no case of dismissal to speak of considering that the Hearing Panel on Discipline's order of dismissal was recalled by the board of directors. Thus, the illegal dismissal case was rendered moot. Respondents' refusal to return back for work was equivalent to voluntary severance of their employment with petitioner. Without necessarily admitting respondents' monetary claims, if at all, their backwages should be reckoned only from September 2, 2006 when they received the notice to return to work.¹⁹

By Decision²⁰ dated November 28, 2008, the NLRC reversed. It ruled that the board of directors had a valid reason to reorganize as the petition letter (*Kapahayagan*) proved that a number of their members were loyal to the former officers. The NLRC did not give credence to respondents' assertion that they were singled out due to their close association with the former management. Respondents' grievance could have been resolved under the Employee's Manual but respondents concluded they were constructively dismissed and so they directly filed the complaint before the labor arbiter. Lastly, respondents were the ones who severed their relationship with petitioner. Respondents' failure to report to work constituted absence without leave subject to the penalty of dismissal. Yet, the board of directors reconsidered the Hearing Panel's termination letter through Resolution No. 06-08-175 dated September 2, 2006 as part of the dispute settlement, but respondents chose not to report back for work anymore.²¹

The NLRC subsequently denied respondents' motion for reconsideration under Resolution dated July 31, 2009.²²

The Court of Appeals' Ruling

By Decision²³ dated May 27, 2010, the Court of Appeals reversed and declared respondents to have been constructively dismissed.²⁴

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¹⁹ *Id.* at 193-200.

²⁰ *Id.* at 344-357.

²¹ *Id.*

²² *Id.* at 359-360.

²³ *Id.* at 40-56.

²⁴ *Id.* at 55.

It held that the alleged reorganization failed to make good the supposed purpose to maximize its employees' potentials and effectiveness. The Court of Appeals noted petitioner's admission before the NLRC that respondents' transfer to other stations was meant to prevent them from doing acts prejudicial to its interest pending implementation of the reorganization. According to the Court of Appeals, petitioner's admission all the more bolstered respondents' claim that their transfer was intended to ease them out. Nothing on record supported petitioner's claim that respondents exhibited hostile attitude towards the new management. Also, petitioner failed to substantiate its claim that respondents divulged sensitive information to the former General Manager causing prejudice to petitioner.

The Court of Appeals found respondents' reinstatement to be not in the best interest of the parties. In lieu of reinstatement, therefore, it ordered the payment of separation pay equivalent to one (1) month pay for every year of service, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof. Further, since petitioner exhibited bad faith, illwill and discrimination in the illegal transfer of respondents, the Court of Appeals deemed it proper to award ₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages to each of the respondents and attorney's fees of ten percent (10%) of the total monetary award. But respondents' claim for illegal deduction was denied for lack of sufficient basis.

Petitioner's motion for reconsideration was denied under Resolution dated October 21, 2010.²⁵

Present Petition

Petitioner now seeks²⁶ affirmative relief from the Court. It argues that the reorganization was part of the management's prerogative and was done in good faith primarily to save Caniogan Credit from collapse and bankruptcy. The span of two and a half (2 ½) months was too short a period for respondents to conclude that they were constructively dismissed as the reorganization plan was a long term process. Had respondents waited for its full implementation, they would have certainly assumed their former positions. For their failure to heed the return to work directive by the board of directors, respondents were deemed to have abandoned their employment and the issue on illegal dismissal, rendered moot.

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²⁵ *Id.* at 67-71.

²⁶ *Id.* at 7-34.

There was no legal and factual basis for the Court of Appeals' award of full backwages, separation pay, and other money claims for respondents were not dismissed from employment in the first place. Granting that respondents were entitled to backwages and separation pay, the same should be computed only until September 2, 2006 when the board of directors recalled their termination and reinstated them. Lastly, there was no basis for the award of moral and exemplary damages, and attorney's fees as there was no evidence on record that petitioner acted with bad faith in the implementation of its reorganization plan.

Respondents, on the other hand, maintain their position that they were constructively dismissed.²⁷

In their reply,²⁸ petitioner principally argues that the NLRC correctly ruled that respondents voluntarily severed their employment relationship with petitioner. In its Supplemental Reply,²⁹ petitioner essentially reiterates that respondents were not dismissed but voluntarily abandoned their job when they refused to report back following the recall of their termination by the board of directors. Too, respondents misrepresented themselves when they made it appear that they were not members of any cooperative when in truth, they joined Malolos Credit as evidenced by the 2008 and 2009 Annual Report of this cooperative. In their memoranda, the parties reiterate their respective arguments.

Issues

1. Was the transfer of respondents tainted with bad faith?
2. Were respondents deemed to have abandoned their employment when they refused to report back for work pursuant to the board of directors' recall of their dismissal?
3. Were respondents constructively dismissed?
4. Are respondents entitled to backwages, separation pay, other monetary awards, moral and exemplary damages, and attorney's fees?

Ruling

The issues at hand are factual in nature, hence, as a rule, this Court does not review supposed errors in the decision of the NLRC

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²⁷ *Id.* at 422-428.

²⁸ *Id.* at 439-447.

²⁹ *Id.* at 449-455.

which raise factual issues, because factual findings of agencies exercising quasi-judicial functions are accorded not only respect but even finality, aside from the consideration that the Court is essentially not a trier of facts. In this case, however, a review of the records thereof with an assessment of the facts is necessary since the factual findings of the NLRC and the labor arbiter are at odds with each other.³⁰

Respondents' transfer was motivated by bad faith.

For a transfer not to be considered a constructive dismissal, the employer must show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his or her salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof shall be tantamount to unlawful constructive dismissal.³¹

Here, petitioner failed to prove its burden that respondent's transfer was for valid and legitimate grounds such as genuine business necessity. From the effectivity of their transfer on May 2, 2006 up to July 17, 2006 or for two and a half (2 ½) months, not a single task was assigned to respondents at their new respective stations. This belied petitioner's claim that respondents' services were greatly needed and instead gave credence to the idea that their transfer was only a ruse to cover up management's mistrust and motive of retaliation. Petitioner's acts clearly exhibited discrimination, insensibility, and disdain towards undesirable employees with close association with the former management. As respondents could no longer take what they felt was an act of oppression, if not constructive dismissal, they were forced not to report for work anymore.

Following the totality of circumstances rule in *Tinio v. Court of Appeals*,³² we rule that respondents' transfer, coupled with the lack of duties and responsibilities conferred, constituted constructive dismissal.

Respondents did not voluntarily abandon their job.

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³⁰ See *Jimenez v. NLRC, et al.*, 326 Phil. 89, 94 (1996).

³¹ See *Sumifru (Philippines) Corp. v. Baya*, 808 Phil. 635, 644 (2017).

³² 551 Phil. 972-984 (2007).

As they were forced to discontinue with their employment, respondents could not be deemed to have voluntarily abandoned their job. Rather respondents were confronted with undeniable hostility from the management. To constitute abandonment, there must be: (a) failure to report for work or absence without valid or justifiable reason; and, (b) a clear intention, as manifested by some overt act, to sever the employer-employee relationship, requisites that are negated by the immediate filing of a complaint for constructive dismissal. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal; more so, when it includes a prayer for reinstatement.³³

The board of directors' resolution recalling their dismissal, if at all, was a mere afterthought on the part of petitioner. In fact, the recall was issued on September 2, 2006 after respondents already filed the labor case against petitioner on July 18, 2006. Respondents' refusal to return to work cannot, in any way, be deemed as abandonment that would validate, an otherwise constructive dismissal. More, this alleged abandonment is negated by respondents' immediate filing of an action for constructive dismissal. Jurisprudence supports this view.³⁴

Respondents are entitled to separation pay in lieu of reinstatement, moral and exemplary damages and attorney's fees.

Due to the strained relations between the parties, the Court of Appeals correctly awarded separation pay equivalent to one (1) month pay for every year of service in lieu of reinstatement, in addition to full backwages, allowances, and other benefits or the monetary equivalent thereof.³⁵

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³³ See *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756-768 (2002).

³⁴ In *Ibon v. Genghis Khan Security Services*, therein petitioner reported to the Aspen Tower Condominium until his last duty on October 4, 2010. Thereafter, respondent promised to provide him a new assignment, which, however, did not happen. On May 10, 2011, petitioner filed a complaint for illegal dismissal and other monetary claims. During the proceedings before the labor arbiter, respondent asserted that it sent letters to petitioner requiring him to report back to work and that it offered reinstatement, which petitioner turned down. The Court held that petitioner's refusal to accept the offer of reinstatement could not have the effect of validating an otherwise constructive dismissal considering the same was made only after petitioner had already filed a case for illegal dismissal. Further, at the time the offer for reinstatement was made, petitioner's constructive dismissal had long been consummated. Such belated gesture did not absolve respondent from the consequences of petitioner's dismissal (811 Phil. 250, 260 [2017]).

³⁵ See *Escario v. NLRC, (Third Div.), et al*, 645 Phil. 503-512 (2010).

Too, the Court of Appeals correctly awarded moral³⁶ and exemplary damages,³⁷ and attorney's fees to respondents. The award of moral damages is proper because, not only was respondents' transfer attended by bad faith, importantly, the way they were treated at their new place of work definitely humiliated them and their morale demeaned. In addition to the award of moral damages, the award of exemplary damages is warranted to deter petitioner from committing the same act of getting rid of undesirable employees in the future.

We deem it proper, however, to increase the awards to ₱25,000.00 as moral damages and ₱25,000.00 as exemplary damages to each respondent in keeping with jurisprudence.

In *Isabela-I Electric Coop., Inc. v. Del Rosario, Jr.*,³⁸ Del Rosario, Jr. was declared to have been illegally transferred and/or demoted as his new position entailed less responsibilities and less qualifications than those pertaining to his former position. In essence, the totality of the circumstances actually obtaining here leads to no other conclusion than that respondent was in fact demoted, hence constructively dismissed. The Court then awarded ₱25,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Since respondents were compelled to litigate to protect their rights, the Court of Appeals correctly awarded attorney's fees of ten percent (10%) of the total monetary award in accordance with Article 2208³⁹ of the New Civil Code.

Lastly, pursuant to *Isabela-I Electric Coop., Inc. v. Del Rosario, Jr.*,⁴⁰ the Court imposes twelve percent (12%) interest *per*

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³⁶ **Moral damages** are recoverable where the employee's dismissal was attended by bad faith or fraud or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy (See *Garcia v. National Labor Relations Commission*, 304 Phil. 798-806 (1994)). **Bad faith** is not simply bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud (See *Jepsen Maritime, Inc. v. Gavina*, G.R. No. 199052, June 26, 2019).

³⁷ **Exemplary damages** may be awarded if the dismissal was effected in a wanton, oppressive, or malevolent manner. (See *Garcia v. National Labor Relations Commission*, 304 Phil. 798-806 [1994]). It may only be awarded in addition to the moral, temperate, liquidated or compensatory damages). (**Article 2229 of the Civil Code.**) It is imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions (See *Magsaysay Maritime Corp. v. Chin, Jr.*, 731 Phil. 609, 614 [2014]).

³⁸ G.R. No. 226369, July 17, 2019.

³⁹ **Article 2208.** In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: xxx xxx xxx
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
xxx

⁴⁰ G.R. No. 226369, July 17, 2019.

annum on the total monetary awards, computed from April 28, 2006 up to June 30, 2013, and thereafter, six percent (6%) *per annum* from July 1, 2013 until fully paid.

ACCORDINGLY, the petition is **DENIED** and the Decision dated May 27, 2010 and Resolution dated October 21, 2010 of the Court of Appeals in CA-G.R. SP No. 110872, **AFFIRMED** with **MODIFICATION**, increasing the awards of moral damages to ₱25,000.00 and exemplary damages to ₱25,000.00 to each respondent and imposing twelve percent (12%) interest *per annum* on the total monetary awards, computed from April 28, 2006 up to June 30, 2013, and thereafter, six percent (6%) *per annum* from July 1, 2013 until fully paid.⁴¹

The respondents' compliance with the Resolution dated December 10, 2019, submitting the soft copy of the second motion for early resolution is **NOTED**.

SO ORDERED.” *Peralta, C.J., on official business.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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(NLRC RAB-III-07-10310-06)

⁴¹ See *Isabela-I Electric Coop., Inc. v. Del Rosario, Jr.*, G.R. No. 226369, July 17, 2019.

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